IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11072 of 1994
with
SPECIAL CIVIL APPLICATION NOS. 11073 TO 11075
OF 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VALLABHBHAI R PATEL

Versus

DY CONSERVATOR OF FOREST

Appearance:

1. Special Civil Application No. 11072 of 1994
MR JV BHAIRAVIA for Petitioner No. 1
NOTICE SERVED for Petitioner No. 1
MR. M.K. PATEL, AGP for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 16/10/2002

ORAL JUDGEMENT

Heard learned advocate Mr. J.V. Bhairavia for the petitioners and Mr. M.K. Patel, learned AGP for the respondents in these four petitions. The petitioners workmen filed recovery applications under section 33-C(2) of the Industrial Disputes Act, 1947 claiming benefits under the Government Resolution dated 17th October, 1988. Separate applications being recovery application nos. 94 of 1990, 93 of 1990, 95 of 1990 and 96 of 1990 were filed by the petitioners before the labour court. Written statement thereto was filed by the respondent and one letter from the Deputy Secretary, Forest Department dated 31st May, 1993 has also been produced alongwith one statement at Exh. 8 wherein details have been given by the respondents for the payment made to each of the applicants. Except that, no other evidence has been produced by the respondent before the labour court. Before the labour court, from the side of the petitioners, one affidavit has been filed pointing out the facts that they are entitled for benefits as per the Government Resolution dated 17.10.1988 and the averments made by the respondent in its written statement were denied by the applicants.

Thereafter, the labour court raised preliminary issue as to whether the applicant has right to file such an application before the labour court under section 33C(2) of the I.D. Act, 1947 ? If yes, whether the applicant is entitled to get the relief as prayed for in the application ?

This aspect has, thus, been examined by the labour court as a preliminary issue and the labour court has come to the conclusion that the applicants workmen have not been able to prove their case before the labour court by producing cogent evidence and, therefore, their recovery applications were rejected by deciding the preliminary issue against the applicants and that order has been challenged by the petitioners workmen by way of these petitions.

Learned advocate Mr.Bhairavia has submitted that the preliminary issue raised by the respondent that the recovery applications are not maintainable as the workmen have not established their case to get the benefit of the Govt. Resolution dated 17.10.1988 is required to be decided finally after considering the merits of the matter. According to him, the labour court has ignored the affidavit filed by the workman wherein the merits of

the matter were mentioned. He has submitted that the labour court has committed gross error while rejecting the recovery applications by holding that there was no other evidence produced by the applicants to show whether other similarly situated employees are getting the benefits of the Government Resolution dated 17.10.1988 or not. Thus, according to his submissions, the labour court has committed error in rejecting the recovery applications while deciding the preliminary issue without examining the merits and, therefore, order of the labour court is required to be quashed and set aside and the matter is required to be remanded back to the labour court for deciding it a fresh after considering the merits of the matter.

On the other hand, learned AGP Mr. M.K. Patel has submitted that before the labour court, the workmen were not able to satisfy by leading proper evidence that they are entitled for such benefits flowing from the Government Resolution dated 17.10.1988 and, therefore, the labour court has rightly examined the preliminary issue in absence of the evidence from the petitioner side and has rightly rejected the recovery applications filed by the petitioner and, therefore, this court should not interfere with the orders in question.

I have considered the submissions made by the learned advocates for the parties. I have also perused the order made by the labour court for rejecting the recovery applications filed by the petitioners under section 33-C(2) of the Industrial Disputes Act, 1947 claiming wages as per the Government Resolution dated 17.10.1988. Before the labour court, Written statement thereto was filed by the respondent and one letter from the Deputy Secretary, Forest Department dated 31st May, 1993 has also been produced alongwith one statement at Exh. 8 wherein details have been given by the respondents for the payment made to each of the applicants. Except that, no other evidence has been produced by the respondent before the labour court. Except that, the respondent has not cross examined the workmen who have filed the recovery application. It is not clear from the record whether the respondent has requested the labour court to give an opportunity to cross examine the workmen. It is also clear that the labour court has not considered the affidavit of the workmen which were filed before it on merits. The respondent has not produced and lead evidence to prove that the other workers are not getting any benefit under the Government as alleged by the petitioners. In view of these facts, the preliminary issue raised by the labour

court for deciding the recovery applications of the petitioners ought to have been decided by examining merits of the matter. It is clear that the merits of the matter has not been considered by the labour court. Therefore, in view of these facts, according to my opinion, the labour court has committed gross error in not considering the merits of the matter. The labour court has also committed an error in not considering the contents of the affidavits filed by the workmen concerned as evidence in respect of their claim and, therefore, according to my opinion, the order passed by the labour court are required to be quashed and set aside and the said recovery applications are required to be remanded to the labour court for examining the said recovery applications on merits after giving reasonable opportunity to both the parties to lead evidence. If such directions are issued, that would met end of justice.

For the reasons recorded hereinabove, these petitions are allowed. The order dated 19.5.1994 passed in the aforesaid recovery applications by the labour court Navsari are hereby quashed and set aside and the matters are remanded to the labour court to decide each of the said recovery applications on merits finally after giving opportunity to both the parties to lead proper evidence and it is open to all the parties to raise all the legal contentions available in law before the labour court.

With these observations and directions, these petitions are disposed of. Rule is made absolute in each of these petitions with no order as to costs.

16.10.2002. (H.K. Rathod,J.)

Vyas